

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TUFAMERICA, INC.,

Plaintiff,

Case No. 12 CV 3529 (AJN)

v.

**NOTICE OF MOTION TO DISMISS**

MICHAEL DIAMOND, ADAM HOROVITZ,  
and ADAM YAUCH, p/k/a BEASTIE BOYS,  
UNIVERSAL MUSIC PUBLISHING, INC.,  
UNIVERSAL MUSIC PUBLISHING GROUP,  
BROOKLYN DUST MUSIC, and CAPITOL  
RECORDS, LLC,

Defendants.

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**PLEASE TAKE NOTICE** that the undersigned attorneys for defendants Capitol Records LLC, Michael Diamond, Adam Horovitz, Estate of Adam Yauch and Brooklyn Dust Music (“Defendants”) move this Court, before the Honorable Alison J. Nathan, United States District Court Judge, United States District Court for the Southern District of New York, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, for an Order pursuant to Federal Rules of Civil Procedure 12(b)(6) dismissing plaintiff TufAmerica, Inc.’s (“Plaintiff’s”) Amended Complaint with prejudice for failure to state a claim upon which relief may be granted. This Motion is based upon the Memorandum of Law and Declaration of Theodore C. Max filed herewith.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to this Court’s letter-order dated December 17, 2012, Plaintiff’s response will be due on or before February 1, 2013, and Defendants’ reply will be due on or before February 15, 2013.

**PLEASE TAKE FURTHER NOTICE** that oral argument is requested.

Dated: January 4, 2013  
New York, New York

Respectfully submitted,

**SHEPPARD, MULLIN, RICHTER &  
HAMPTON LLP**

By: 

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*Attorneys for Defendants  
Capitol Records, LLC,  
Michael Diamond,  
Adam Horovitz,  
the Estate of Adam Yauch, and  
Brooklyn Dust Music*

**Certificate of Service**

I hereby certify that on January 4, 2013, a true and correct copy of the foregoing Notice of Motion to Dismiss, Declaration of Theodore C. Max In Support of Motion to Dismiss and Memorandum of Law In Support of Motion to Dismiss was filed electronically. Notice of this filing will be sent to all parties which have appeared by operation of the Court's electronic filing system.

/s/ Theodore C. Max  
Theodore C. Max